



DATE: June 27, 2002

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SUBJECT: H-2A Compliance Review Check List

1. **Purpose.** To provide H-2A users with a compliance review form to assist in determining whether they are meeting the requirements of the H-2A program.
 2. **Reference.** OWS Information Bulletin No. 10-01.
 3. **Background.** Investigations conducted during FY 2000 by the Wage and Hour Division (WHD) of the Employment Standards Administration (ESA) resulted in a finding that 48% of H-2A users were in violation of the H-2A provisions. Therefore, the Division of Foreign Labor Certification is taking a pro-active approach in communicating with H-2A program users by providing enforcement criteria used by the WHD.
- The H-2A compliance review form was developed by the WHD to assist H-2A users in determining whether the requirements of the H-2A program are being met.
4. **Action Required.** States are asked to make sure that all H-2A users receive copy of this Compliance Review Checklist to ensure continued compliance with all contractual obligations.
 5. **Inquiries.** Questions should be directed to Val Castaneda: 617.565.2265.
 6. **Attachment.** H-2A Compliance Review Checklist.

Joseph F. Stoltz
Regional Director
For Workforce Security

H-2A COMPLIANCE REVIEW

	YES	NO
<p>NOW THAT THE EMPLOYMENT AND TRAINING ADMINISTRATION (ETA) HAS CERTIFIED H-2A JOBS FOR YOU, ARE YOU AWARE:</p> <ul style="list-style-type: none"> • THAT THE FOREIGN H-2A WORKERS CAN WORK: • ONLY FOR YOU? • ONLY AT THE LOCATION(S) NAMED? • ONLY PERFORMING THE NAMED CROP ACTIVITY? • ONLY AT THE STATED RATE(S) OF PAY? • ONLY DURING THE STATED TIME PERIOD? • THAT YOU MUST HIRE ALL U.S. JOB APPLICANTS REFERRED TO YOU WHO ARE READY, WILLING AND ABLE TO PERFORM THE JOB DURING THE FIRST 50% OF THE CONTRACT PERIOD? • THAT ALL U.S. WORKERS DOING THE SAME JOBS AS H-2A WORKERS (CORRESPONDING EMPLOYMENT) ARE ENTITLED TO ALL THE RIGHTS AND PROTECTIONS OF THE CONTRACT? FOR INSTANCE, YOU MUST PROVIDE FREE TRANSPORTATION, FROM POINT OF RECRUITMENT TO THE WORKSITE AND BETWEEN HOUSING SITE AND FIELDS, AND FREE HOUSING, TO BOTH H-2A AND U.S. MIGRANT WORKERS? • THAT IF YOU TERMINATE A WORKER OR A WORKER ABANDONS EMPLOYMENT, YOU MUST IMMEDIATELY CONTACT THE LOCAL JOB SERVICE SO THERE IS AN OPPORTUNITY TO INVESTIGATE THE CIRCUMSTANCES OF THE TERMINATION/ABANDONMENT OR TO REFER QUALIFIED U.S. WORKERS TO FILL JOB OPENINGS? • THAT WORKERS WHO COMPLETE THE SEASON OR ARE TERMINATED WITHOUT SUFFICIENT CAUSE MUST BE PAID THEIR RETURN TRANSPORTATION AND FULL-$\frac{3}{4}$ GUARANTEE? 		
ONCE EMPLOYMENT OF U.S. WORKERS IN CORRESPONDING EMPLOYMENT, OR EMPLOYMENT OF H-2A WORKERS COMMENCES, DO YOU:		
1. PROVIDE THE WORK CONTRACT OR JOB ORDER (FORM ETA-790) TO EACH WORKER (FOREIGN OR U.S. WORKER IN CORRESPONDING EMPLOYMENT) BY THE FIRST WORKDAY?		
2. KEEP ALL REQUIRED PAYROLL RECORDS?		
3. PROVIDE REQUIRED WAGE STATEMENT TO WORKER ON OR BEFORE EACH PAYDAY?		

4. PAY ALL WAGES DUE ON THE DISCLOSED PAYDAY?		
5. PAY THE CORRECT WAGE RATE EACH PAYDAY? THAT RATE IS THE HIGHEST OF THE AEW, STATE OR FEDERAL MINIMUM WAGE, PREVAILING WAGE, OR PROMISED WAGE, INCLUDING PIECE-RATES.		
6. GUARANTEE PAYMENT FOR ¾ OF THE WORK HOURS IN THE CONTRACT PERIOD?		
7. MAKE ALL LEGALLY REQUIRED PAYROLL DEDUCTIONS AND NOT MAKE DEDUCTIONS PROHIBITED BY LAW OR NOT DISCLOSED IN WORKER CONTRACT?		
8. A. PROVIDE HOUSING TO ALL WORKERS UNDER THE CONTRACT (U.S. WORKERS IN CORRESPONDING EMPLOYMENT AND H-2A WORKERS) WHO CANNOT REASONABLY RETURN TO THEIR PERMANENT HOME AT NIGHT? AND B. ENSURE THE HOUSING REMAINS IN COMPLIANCE WITH APPLICABLE SAFETY AND HEALTH STANDARDS?		
9. PROVIDE HOUSING DESCRIBED IN #8 FREE OF CHARGE FOR RENT OR DEPOSITS TO ALL WORKERS?		
10. A. PAY THE COST OF TRANSPORTATION AND SUBSISTENCE, TO YOUR FARM, FROM WHERE EACH U.S. OR FOREIGN WORKER WAS RECRUITED WHEN THE WORKER COMPLETES 50% OF THE CONTRACT? B. PROVIDE DAILY TRANSPORTATION FROM THE HOUSING TO THE WORK SITE AT NOT COST? C. AT THE END OF THE CONTRACT PERIOD, PAY FOR THE WORKER'S RETURN TRANSPORTATION AND SUBSISTENCE TO "THE PLACE FROM WHICH HE CAME", USUALLY HIS OR HER HOME?		
11. ENSURE THAT VEHICLES USED TO TRANSPORT U.S. OR H-2A WORKERS MEET FEDERAL, STATE AND LOCAL SAFETY REQUIREMENTS?		
12. PROVIDE THREE MEALS PER DAY AT COST OR FREE CENTRALIZED COOKING FACILITIES FOR THE WORKERS?		
13. PROVIDE NECESSARY TOOLS, SUPPLIES AND EQUIPMENT AT NO COST TO THE WORKER?		
14. PROVIDE WORKER'S COMPENSATION INSURANCE (OR ITS EQUIVALENT IF		

WORKERS ARE EXCLUDED FROM STATE WORKERS COMPENSATION) AT NO COST TO THE WORKER?		
15. IN CASE OF CONTRACT IMPOSSIBILITY ("ACT OF GOD") THAT REQUIRES TERMINATION OF EMPLOYMENT PRIOR TO THE END OF THE CONTRACT PERIOD, PROVIDE REMAINING CONTRACT BENEFITS, INCLUDING PAYMENT OF $\frac{3}{4}$ GUARANTEE OBLIGATIONS (UP TO TIME OF THE EVENT WHICH TERMINATED THE EMPLOYMENT) AND RETURN TRANSPORTATION/SUBSISTENCE?		
16. A. AVOID REJECTING OR TERMINATING U.S. WORKERS OTHER THAN FOR LAWFUL JOB-RELATED REASONS? AND DO YOU B. NOTIFY THE LOCAL JOB SERVICE OFFICE OF ALL REJECTIONS, TERMINATIONS AND RESIGNATIONS OF U.S. AND/OR FOREIGN WORKERS?		
17. PROVIDE U.S. WORKERS EMPLOYED IN OR APPLYING FOR CORRESPONDING EMPLOYMENT WAGES, BENEFITS, AND WORKING CONDITIONS AT LEAST EQUAL TO THOSE PROVIDED TO FOREIGN WORKERS?		
18. AVOID DISCRIMINATING AGAINST WORKERS WHO TESTIFY OR OTHERWISE EXERCISE THEIR RIGHTS?		
19. AVOID CAUSING WORKERS TO WAIVE THEIR RIGHTS?		
20. PERMIT DOL INVESTIGATIONS OF YOUR BUSINESS?		
21. AVOID INTERFERING WITH DOL OFFICIALS WHO INVESTIGATE YOUR BUSINESS ACTIVITIES?		
22. AVOID PROVIDING FALSE INFORMATION TO DOL OFFICIALS?		
23. MAKE RECORDS AVAILABLE TO DOL, THE WORKER OR THE WORKER'S REPRESENTATIVE?		
24. COMPLY WITH ALL FEDERAL, STATE AND LOCAL EMPLOYMENT-RELATED LAWS AND REGULATIONS?		
25. COMPLY WITH THE FAIR LABOR STANDARDS ACT?		
26. IF YOU EMPLOY U.S. WORKERS, COMPLY WITH THE MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT?		

IF YOU ANSWERED "YES" TO EACH QUESTION, YOU SHOULD BE IN FULL COMPLIANCE. IF YOU ANSWERED "NO" TO SOME QUESTION(S), YOU MAY WISH TO CONTACT THE NEAREST WAGE AND HOUR DIVISION OFFICE LISTED IN TELEPHONE BOOK AND AVAILABLE VIA THE DOL HOME PAGE AT <http://www.dol.gov/dol/esa/public/contacts/whd/america2.htm>.

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